

LEGISLATIVE COUNCIL BRIEF

Fisheries Protection Ordinance
(Chapter 171)

FISHERIES PROTECTION (AMENDMENT) BILL 1998 FISHERIES PROTECTION (AMENDMENT) REGULATION 1998

INTRODUCTION

At the meeting of the Executive Council on 30 June 1998, the Council ADVISED and the Acting Chief Executive ORDERED that-

- (a) the Fisheries Protection (Amendment) Bill 1998, at Annex A, should be introduced into the Legislative Council; and
- (b) the Fisheries Protection (Amendment) Regulation 1998, at Annex B, should be approved in principle, to be referred back to Members to be made after the Amendment Bill has passed into law.

BACKGROUND AND ARGUMENT

General Background

2. The objectives of the Fisheries Protection Ordinance (Chapter 171) are to promote the conservation of fish and other forms of aquatic life within the waters of Hong Kong, to regulate fishing practices and to prevent activities detrimental to the fishing industry. The Ordinance provides, among other things, that -

- (a) the Chief Executive in Council may by regulation provide for the prohibition or restriction of the use of explosives and toxic substances for the purpose of fishing;
- (b) such regulations may prescribe penalties not exceeding \$10,000 and imprisonment for six months;

- (c) “toxic substances”, which are specified in the Schedule to the Ordinance, include cyanide; and
- (d) the Chief Executive in Council may amend the Schedule by order published in the Gazette.

3. The Fisheries Protection Regulations prohibit the possession and use of explosives and toxic substances for fishing. They provide that any person including the master or other person in charge of a vessel who contravenes these Regulations shall be guilty of an offence and be liable on summary conviction to a fine of \$10,000 and to imprisonment for six months.

The Proposals

4. Fishing with explosives has a devastating effect on the marine environment as the shock waves produced by underwater explosive can damage or even kill many forms of marine life. Such means of fishing also has a serious and long-term detrimental impact on fisheries resources. However, the amount of explosives confiscated by the Hong Kong Police Force as substances used for fishing has increased significantly over the past five years, as follows -

Year	Explosives confiscated (kilograms)
1993	15
1994	227
1995	270
1996	388
1997	214 ^(note)

We consider that the maximum fine of \$10,000 for fishing with explosives, which was set ten years ago, is inadequate to deter such activity. A heavier penalty should be imposed given the far-reaching impact of such activity on the fisheries resources. We therefore propose to increase the maximum fine from \$10,000 to \$200,000.

5. Toxic substances such as cyanide stun large fish, enabling them to be captured and sold live to restaurants in Hong Kong and elsewhere. However, fishing with the use of cyanide can damage or even kill coral reefs. Natural and artificial reefs are important fish habitats. Their integrity is essential for the long-term sustainability of fisheries production. As part of our initiatives to conserve fisheries

^(note) The substantial decrease in the amount of explosives confiscated in 1997 as compared to 1996 was mainly due to the fact that there was an extraordinary seizure of explosives of 225 kilogrammes in 1996.

resources in Hong Kong waters, we have recently begun a five-year programme, costing some \$100 million, to deploy artificial reefs in marine parks and at sites of special importance for local fisheries. Apart from damaging coral reefs, cyanide also destroys marine life inhabiting the reefs. Although fishing with toxic substances, such as cyanide, is currently not a major problem in Hong Kong waters, it is essential that an adequate deterrent is put in place to prevent such activity and to protect the natural and artificial reefs and other forms of marine life in Hong Kong waters. We therefore propose to increase the maximum fine for fishing with toxic substances from \$10,000 to \$200,000.

6. Apart from the use of explosives and toxic substances, there are other types of destructive fishing methods. The use of vacuum suction and dredging devices to harvest clams causes serious disturbance to the seabed and the aquatic life within the waters. Electric fishing harms or even kills most fish, including fish fry and other marine life. Such methods of fishing have a long-term deleterious effect on fisheries resources and the marine ecosystem. We therefore propose to make it an offence to use anywhere in the waters of Hong Kong any kind of apparatus for destructive fishing, with maximum penalties identical to those for fishing with explosives and toxic substances, i.e. liability on summary conviction to a fine of \$200,000 and to imprisonment of six months. We propose that the Director of Agriculture and Fisheries be empowered to specify the types of apparatus for destructive fishing by legal notice in the Gazette.

7. The Schedule to the Ordinance specifies the substances deemed to be toxic substances for the purposes of the Ordinance. There is no longer any practical need for the power to amend the Schedule to rest with the Chief Executive in Council. We therefore propose to transfer the power to amend the Schedule to the Director of Agriculture and Fisheries. Nevertheless, the exercise of such power should continue to be subject to scrutiny by the Legislative Council through negative vetting of the order to amend the Schedule.

THE BILL

8. The principal provisions of the Amendment Bill provide as follows -

- (a) **Clause 2** enables the Chief Executive in Council to make regulations to prohibit or restrict the use of any kind of apparatus for the purpose of fishing specified by the Director of Agriculture and Fisheries by legal notice in the Gazette and increases the maximum fine that may be provided for under regulations made under the Ordinance to \$200,000; and

- (b) **Clause 3** transfers the power to amend the Schedule to the Ordinance from the Chief Executive in Council to the Director of Agriculture and Fisheries.

THE REGULATION

- 9. The principal provisions of the Amendment Regulation provide as follows -
 - (a) **Section 2** prohibits the use for the purpose of fishing of any kind of apparatus specified by the Director of Agriculture and Fisheries by legal notice in the Gazette;
 - (b) **Section 3** extends the liability of the master or person in charge of a vessel to cover contravention of the new regulation in (a) above; and
 - (c) **Section 4** increases the maximum fine for contravention of the Amendment Regulation from \$10,000 to \$200,000.

PUBLIC CONSULTATION

10. The Director of Agriculture and Fisheries has consulted 44 fishermen's associations, the concerned District Boards, the Capture Fisheries Sub-committee of the Advisory Committee on Agriculture and Fisheries, the Marine Parks Committee of the Country and Marine Parks Board, the Advisory Council on the Environment and seven green groups and professional associations on the proposed legislative amendments. The Environmental Affairs Panel of the then Legislative Council was informed of the proposals in December 1996. All are either supportive of the proposals or have no objection to them.

HUMAN RIGHTS IMPLICATIONS

11. The Department of Justice advises that the proposed Amendment Bill and Amendment Regulation are consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

12. There are no additional financial or staffing implications.

ECONOMIC IMPLICATIONS

13. The proposals would deter the use of destructive fishing methods. They would help conserve the fisheries resources in Hong Kong waters and benefit the fishing industry in the long term.

ENVIRONMENTAL IMPLICATIONS

14. The proposals would contribute to conservation of the marine ecosystem and enhance Hong Kong's environmental protection credentials.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be -

Publication in the Gazette	10 July 1998
First Reading and commencement of Second Reading debate	22 July 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

16. A press release will be issued on 10 July 1998. A spokesman will be available to answer media enquiries.

ENQUIRY

17. Any enquiries on this brief should be directed to Miss Dora Fu, Principal Assistant Secretary for Economic Services (tel. 2810 2507 or fax. 2868 4679).

Economic Services Bureau
8 July 1998

A BILL

To

Amend the Fisheries Protection Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Fisheries Protection (Amendment) Ordinance 1998.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.

2. Regulations

Section 4 of the Fisheries Protection Ordinance (Cap. 171) is amended -

(a) in subsection (1) by adding -

“(ga) the prohibition or restriction of the use of any apparatus of a class or description specified under paragraph (gb), for the purpose of fishing;

(gb) the specification by the Director, by notice published in the Gazette, of the class or description of apparatus for the purposes of paragraph (ga);”;

- (b) in subsection (2) by repealing “\$10,000” and substituting “\$200,000”.

3. Amendment of Schedule

Section 10 is amended by repealing “Governor in Council” and substituting “Director”.

Explanatory Memorandum

This Bill amends the Fisheries Protection Ordinance (Cap. 171) to -

- (a) expand the regulation making power to provide for regulations prohibiting or restricting the use of apparatus specified by the Director of Agriculture and Fisheries in the Gazette, for the purpose of fishing;
- (b) increase the maximum fine for an offence under the regulation from \$10,000 to \$200,000; and
- (c) confer power on the Director to amend the Schedule to the Ordinance.

FISHERIES PROTECTION (AMENDMENT) REGULATION 1998

(Made by the Chief Executive in Council under section
4 of the Fisheries Protection Ordinance (Cap. 171))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.

2. Regulation added

The Fisheries Protection Regulations (Cap. 171 sub. leg.) are amended by adding -

“4A. Prohibition of the use of apparatus

(1) No person shall use for the purpose of fishing any apparatus of a class or description specified by the Director under subsection (2).

(2) The Director may specify by notice published in the Gazette the class or description of apparatus for the purposes of subsection (1).”.

3. Liability of master, etc., of vessel

Regulation 5 is amended -

- (a) by repealing “or 4” and substituting “, 4 or 4A”;
- (b) by repealing “\$10,000” and substituting “\$200,000”.

4. Penalties

Regulation 7 is amended -

- (a) by repealing “or 4” and substituting “, 4 or 4A”;
- (b) by repealing “\$10,000” and substituting “\$200,000”.

Clerk to the Executive Council

COUNCIL CHAMBER

1998

Explanatory Note

This Regulation amends the Fisheries Protection Regulations (Cap. 171 sub. leg.) to provide for -

- (a) the prohibition of the use of the class or description of apparatus specified by the Director of Agriculture and Fisheries by notice in the Gazette for the purpose of fishing; and
- (b) the increase of fines from \$10,000 to \$200,000 for any contravention of regulation 2, 3, 4 or 4A of those Regulations.